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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,276	07/14/2003	Glenn Sherburne		7744

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EXAMINER

PAYNE, SHARON E

ART UNIT PAPER NUMBER

2875

DATE MAILED: 10/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/620,276

Applicant(s)

SHERBURNE, GLENN

Examiner

Sharon E. Payne

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

1. The drawings are objected to because they have no reference characters, and they are of poor quality. (Photographs should not be used.) Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: 1) the word "Priority" should be "Priority" in line 2 of page 1; 2) the brief descriptions of the drawings should be amended to delete Figs. 1 and 2, since these figures were not filed with the application and the Applicant has indicated that these figures will not be filed since they are prior art. Amendments to the Figures to make them correspond to the new figure numbers may be necessary. Appropriate correction is required.

Claim Objections

3. Claim 1 is objected to because of the following informalities: 1) the phrase "the light emitting diode" should be "the light"; and 2) the word "intense" should not be used because it is a term of degree that is not defined in the specification or claims. Appropriate correction is required.

4. Claim 25 is objected to because of the following informality: the word "bright" should be deleted because it is a term of degree that is not defined in the specification or claims.

Claim Rejections - 35 USC § 112

5. Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are the following: 1) the relationship between the flickering means and the light (claim 1); and 2) the relationship between the flickering means and the light source (claim 20).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 2, 4, 6, 14, 15, 17-20 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andeweg (U.S. Patent 3,761,702) in view of Moore (U.S. Patent 6,688,752).

Regarding claim 1, Andeweg discloses a wax body (abstract) with an internal cavity therein (Fig. 7), an intense light positioned within the internal cavity for illuminating the wax body from within (Fig. 7). Andeweg does not disclose a light emitting diode or a flickering means.

Moore discloses a power source coupled to the light emitting diode (column 1, lines 50-67) and flickering means for causing the light to flicker (Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the LED and flickering means of Moore in the apparatus of Andeweg to produce flame-like light without producing a lot of heat.

Concerning claim 2, Andeweg does not disclose a light emitting diode. Moore discloses a light emitting diode (Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the light emitting diode of Moore in the apparatus of Andeweg to produce light without producing a lot of heat.

Regarding claim 4, Andeweg discloses the power source as a battery (column 3, lines 10-13).

Concerning claim 6, Andeweg discloses the wax body having a substantially flat bottom surface with the internal cavity extending therefrom (Fig. 7).

Regarding claim 14, Andeweg does not disclose a programmable microcontroller. Moore discloses a programmable microcontroller (Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the microcontroller of Moore in the apparatus of Andeweg to cause the lights to flicker.

Concerning claim 15, Andeweg does not disclose a microcontroller. Moore discloses the flickering means varying the voltage over time (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the microcontroller of Moore in the apparatus of Andeweg to cause the lights to generate a flickering appearance.

Regarding claim 17, Andeweg does not disclose a programmable microcontroller programmed to provide random lighting.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to program the microcontroller of Moore in the apparatus of Andeweg to provide random lighting. Since the microcontroller is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to program the microcontroller as desired to give a random lighting effect.

Concerning claim 18, Andeweg does not disclose a programmable microcontroller programmed to provide flashing lighting.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to program the microcontroller of Moore in the apparatus of Andeweg to provide flashing lighting. Since the microcontroller is well known in the art, it would have been obvious to one of ordinary skill in the art at the time the invention was made to program the microcontroller as desired to give a flashing lighting effect.

Regarding claim 19, Andeweg does not disclose a programmable microcontroller programmed to provide patterned lighting.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to program the microcontroller of Moore in the apparatus of Andeweg to provide patterned lighting. Since the microcontroller is well known in the art, it would have been obvious to one of

ordinary skill in the art at the time the invention was made to program the microcontroller as desired to give a patterned lighting effect.

Concerning claim 20, Andeweg discloses a wax body with an internal cavity therein (abstract, Fig. 7), a light source positioned within the internal cavity for illuminating the wax body from within (Fig. 7), a disposable battery (reference number 25, Fig. 3) positioned within the internal cavity and coupled to the light source (Fig. 3). Andeweg does not disclose flickering means. (In Andeweg, nothing says that the battery is rechargeable, so it has to be disposable.)

Moore discloses flickering means capable of time variation of voltage provided to the light source (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the flickering means of Moore in the apparatus of Andeweg to generate a flame-like appearance.

Regarding claim 25, Andeweg does not disclose a light emitting diode. Moore discloses a light emitting diode (Fig. 2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the LED of Moore in the apparatus of Andeweg to generate light without generating a lot of heat.

8. Claims 3, 5, 12, 13 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andeweg in view of Moore as applied to claim 2 and 20 above, and further in view of Starry (U.S. Publication 2002/0080605).

Regarding claim 3, Andeweg does not disclose a circuit board or a flickering means. Moore discloses a flickering means as a device capable of time variation of the voltage (abstract).

Starry discloses a circuit board (reference number 34). The portion of the claim starting with "for controlling" and continuing until "diode" is considered to be functional language that is not given patentable weight. See M.P.E.P. 2114.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to put the flickering device of Moore on the circuit board of Starry to connect the flickering device to the light source and control the light source.

Concerning claim 5, Andeweg does not disclose a circuit board. Moore discloses the light emitting diode (Fig. 2). Starry discloses the light source (reference number 18), the power source (reference number 24) and the circuit board (reference number 34) positioned within the internal cavity (Fig. 4).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the light source of Andeweg with the LED of Moore to generate light without generating a lot of heat.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the configuration of Starry in the apparatus of Andeweg to control the light source and protect the working components.

Regarding claims 12 and 13, these claim constitute functional language that is not given patentable weight. See M.P.E.P. 2114.

Concerning claim 21, Andeweg does not disclose a circuit board or a flickering means. Starry discloses a circuit board (reference number 34). Moore discloses the flickering means (Fig. 2).

The portion of the claim starting with "the circuit board for controlling" and continuing to the end of the claim is considered to be functional language that is not given patentable weight. See M.P.E.P. 2114.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to put the flickering means of Moore on the circuit board of Starry in the apparatus of Andeweg to control the light source and produce a flickering appearance.

9. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Andeweg in view of Moore as applied to claim 14 above, and further in view of Kitchen (U.S. Publication 2003/0198045 A1).

Regarding claim 16, Andeweg does not disclose a 555 timer. Kitchen discloses a 555 timer (paragraph 0026).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the timer of Kitchen in the apparatus of Andeweg to accommodate a battery as the power supply. See paragraph 0026 of Kitchen.

Allowable Subject Matter

10. Claims 7-11 and 22-24 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter. The prior art fails to disclose a flameless candle having the light emitting diode, power source and circuit board contained in an enclosed insert positioned within the internal cavity as recited in claims 7 and 22.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sharon E. Payne whose telephone number is (571) 272-2379. The examiner can normally be reached on regular business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (571) 272-2378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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